

Cynthia Z. Levin, Esq. (SBN 27050)  
Law Offices of Todd M. Friedman, P.C.  
1150 First Avenue, Suite 501  
King of Prussia, PA 19406  
Phone: 866-598-5042  
Fax: 866 633-0228  
[clevin@toddflaw.com](mailto:clevin@toddflaw.com)

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
EASTER DISTRICT OF PENNSYLVANIA**

Case No. 20-cv-2185 MMB

STEWART SMITH; FRED HEIDARPOUR, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

VISION SOLAR LLC, and DOES 1 through 10, inclusive, and each of them,

Defendant.

) ) **CLASS ACTION**

) ) **FIRST AMENDED COMPLAINT**

) ) **FOR VIOLATIONS OF:**

) ) 1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]

) ) 2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]

) ) 3. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(c)]

) ) 4. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(c)]

) ) **DEMAND FOR JURY TRIAL**

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1 Plaintiffs STEWART SMITH and FRED HEIDARPOUR (hereinafter  
2 referred to collectively as “Plaintiffs”), individually and on behalf of all others  
3 similarly situated, allege the following upon information and belief based upon  
4 personal knowledge:

5 **NATURE OF THE CASE**

6 1. Plaintiffs bring this action individually and on behalf of all others  
7 similarly situated seeking damages and any other available legal or equitable  
8 remedies resulting from the illegal actions of VISION SOLAR LLC  
9 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiffs on  
10 Plaintiffs’ cellular telephone in violation of the Telephone Consumer Protection  
11 Act, *47. U.S.C. § 227 et seq.* (“TCPA”) and related regulations, specifically the  
12 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff  
15 Stewart Smith, a resident of Pennsylvania, and Plaintiff Fred Heidarpour, a resident  
16 of California, seek relief on behalf of a Class, which will result in at least one class  
17 member belonging to a different state than that of Defendant, a Pennsylvania  
18 company. Plaintiffs also seek up to \$1,500.00 in damages for each call in violation  
19 of the TCPA, which, when aggregated among a proposed class in the thousands,  
20 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both  
21 diversity jurisdiction and the damages threshold under the Class Action Fairness  
22 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Eastern  
24 District of Pennsylvania pursuant to *28 U.S.C. § 1391(b)* and because Defendant  
25 does business within the State of Pennsylvania and Plaintiff Smith resides within  
26 the County of Montgomery.

27 **PARTIES**

28 4. Plaintiff STEWART SMITH (hereinafter “SMITH”), is a natural

1 person residing in Montgomery County, Pennsylvania and is a “person” as defined  
2 by 47 U.S.C. § 153 (39).

3 5. Plaintiff FRED HEIDARPOUR (hereinafter “HEIDARPOUR”), is a  
4 natural person residing in Maricopa County, Arizona and is a “person” as defined  
5 by 47 U.S.C. § 153 (39).

6 6. Defendant, VISION SOLAR LLC (“Defendant”) is a solar and  
7 renewable energy company, and is a “person” as defined by 47 U.S.C. § 153 (39).

8 7. The above named Defendant, and its subsidiaries and agents, are  
9 collectively referred to as “Defendants.” The true names and capacities of the  
10 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
11 currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious  
12 names. Each of the Defendants designated herein as a DOE is legally responsible  
13 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend  
14 the Complaint to reflect the true names and capacities of the DOE Defendants when  
15 such identities become known.

16 8. Plaintiffs are informed and believe that at all relevant times, each and  
17 every Defendant was acting as an agent and/or employee of each of the other  
18 Defendants and was acting within the course and scope of said agency and/or  
19 employment with the full knowledge and consent of each of the other Defendants.  
20 Plaintiffs are informed and believes that each of the acts and/or omissions  
21 complained of herein was made known to, and ratified by, each of the other  
22 Defendants.

### 23 FACTUAL ALLEGATIONS

24 9. Beginning in or around September 2019, Defendant contacted SMITH  
25 on SMITH’s cellular telephone number ending in -6860 in an attempt to solicit  
26 Plaintiffs to purchase Defendant’s services.

27 10. Beginning in or around January 2020, Defendant contacted  
28 HEIDARPOUR on HEIDARPOUR’s landline telephone number ending in -9503

1 in an attempt to solicit Plaintiffs to purchase Defendant's services.

2       11. Defendant used an "automatic telephone dialing system" as defined  
3 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiffs seeking to solicit its services.

4       12. Defendant contacted or attempted to contact SMITH from multiple  
5 telephone numbers confirmed to belong to Defendant, including (267) 304-1405,  
6 (856) 375-8129, (856) 203-2277, (818) 702-1899, and (856) 687-1801.

7       13. Defendant contacted or attempted to contact HEIDARPOUR from  
8 multiple telephone numbers confirmed to belong to Defendant, including (856)  
9 375-8129, (480) 524-1727, (856) 741-1211, and (480) 635-5630.

10      14. Defendant's calls to Plaintiffs constituted calls that were not for  
11 emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

12      15. During all relevant times, Defendant did not possess SMITH's "prior  
13 express consent" to receive calls using an automatic telephone dialing system or an  
14 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §  
15 227(b)(1)(A).

16      16. During all relevant times, Defendant did not possess  
17 HEIDARPOUR's "prior express consent" to receive calls using an automatic  
18 telephone dialing system or an artificial or prerecorded voice on his landline  
19 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

20      17. Further, SMITH's cellular telephone number ending in -6860 was  
21 added to the National Do-Not-Call Registry on or about June 11, 2010.

22      18. HEIDARPOUR's landline telephone number ending in -9503 was  
23 added to the National Do-Not-Call Registry on or about November 12, 2014.

24      19. Defendant placed multiple calls soliciting its business to SMITH on  
25 his cellular telephone ending in -6860 beginning in or around September 2019.

26      20. Defendant placed multiple calls soliciting its business to  
27 HEIDARPOUR on his landline telephone ending in -9503 beginning in or around  
28 January 2020.

1        21. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
2 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

3        22. Plaintiffs received at least one solicitation call from Defendant within  
4 a 12-month period.

5        23. Defendant called Plaintiffs in an attempt to solicit its services and in  
6 violation of the National Do-Not-Call provisions of the TCPA.

7       24. Upon information and belief, and based on Plaintiffs' experiences of  
8 being called by Defendant after being on the National Do-Not-Call list for several  
9 years prior to Defendant's initial call, and at all relevant times, Defendant failed to  
10 establish and implement reasonable practices and procedures to effectively prevent  
11 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §  
12 227(c)(5).

## **CLASS ALLEGATIONS**

14       25. Plaintiffs brings this action individually and on behalf of all others  
15 similarly situated, as a member the two proposed classes (hereafter, jointly, "The  
16 Classes").

17       26. The class concerning the ATDS claim for no prior express consent  
18 (hereafter “The ATDS Class”) is defined as follows:

19 All persons within the United States who received any  
20 solicitation/telemarketing telephone calls from  
21 Defendant to said person's cellular telephone made  
22 through the use of any automatic telephone dialing  
23 system or an artificial or prerecorded voice and such  
24 person had not previously consented to receiving such  
calls within the four years prior to the filing of this  
Complaint

26        27. The class concerning the National Do-Not-Call violation (hereafter  
27 "The DNC Class") is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received more than one call made by or on behalf of Defendant that promoted Defendant's products or services, within any twelve-month period, within four years prior to the filing of the complaint.

28. SMITH represents, and is a member of, The ATDS Class, consisting of all persons within the United States who received any solicitation telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

29. Plaintiffs represent, and are members of, The DNC Class, consisting of all persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received more than one call made by or on behalf of Defendant that promoted Defendant's products or services, within any twelve-month period, within four years prior to the filing of the complaint.

30. Defendant, its employees and agents are excluded from The Classes. Plaintiffs do not know the number of members in The Classes, but believes the Classes members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

31. The Classes are so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Classes members are unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs are informed and believes and thereon alleges that The Classes includes thousands of members. Plaintiffs allege that The Classes

1 members may be ascertained by the records maintained by Defendant.

2       32. SMITH and members of The ATDS Class were harmed by the acts of  
3 Defendant in at least the following ways: Defendant illegally contacted SMITH  
4 and ATDS Class members via their cellular telephones thereby causing SMITH  
5 and ATDS Class members to incur certain charges or reduced telephone time for  
6 which SMITH and ATDS Class members had previously paid by having to retrieve  
7 or administer messages left by Defendant during those illegal calls, and invading  
8 the privacy of SMITH and ATDS Class members.

9       33. Common questions of fact and law exist as to all members of The  
10 ATDS Class which predominate over any questions affecting only individual  
11 members of The ATDS Class. These common legal and factual questions, which  
12 do not vary between ATDS Class members, and which may be determined without  
13 reference to the individual circumstances of any ATDS Class members, include,  
14 but are not limited to, the following:

- 15       a. Whether, within the four years prior to the filing of this  
16              Complaint, Defendant made any telemarketing/solicitation call  
17              (other than a call made for emergency purposes or made with  
18              the prior express consent of the called party) to a ATDS Class  
19              member using any automatic telephone dialing system or any  
20              artificial or prerecorded voice to any telephone number  
21              assigned to a cellular telephone service;
- 22       b. Whether SMITH and the ATDS Class members were damaged  
23              thereby, and the extent of damages for such violation; and
- 24       c. Whether Defendant should be enjoined from engaging in such  
25              conduct in the future.

26       34. As a person that received numerous telemarketing/solicitation calls  
27              from Defendant using an automatic telephone dialing system or an artificial or  
28              prerecorded voice, without his prior express consent, SMITH is asserting claims

1 that are typical of The ATDS Class.

2       35. Plaintiffs and members of The DNC Class were harmed by the acts of  
3 Defendant in at least the following ways: Defendant illegally contacted Plaintiffs  
4 and DNC Class members via their telephones for solicitation purposes, thereby  
5 invading the privacy of said Plaintiffs and the DNC Class members whose  
6 telephone numbers were on the National Do-Not-Call Registry. Plaintiffs and the  
7 DNC Class members were damaged thereby.

8       36. Common questions of fact and law exist as to all members of The  
9 DNC Class which predominate over any questions affecting only individual  
10 members of The DNC Class. These common legal and factual questions, which do  
11 not vary between DNC Class members, and which may be determined without  
12 reference to the individual circumstances of any DNC Class members, include, but  
13 are not limited to, the following:

- 14           a. Whether, within the four years prior to the filing of this  
15              Complaint, Defendant or its agents placed more than one  
16              solicitation call to the members of the DNC Class whose  
17              telephone numbers were on the National Do-Not-Call Registry  
18              and who had not granted prior express consent to Defendant and  
19              did not have an established business relationship with  
20              Defendant;
- 21           b. Whether Defendant obtained prior express written consent to  
22              place solicitation calls to Plaintiffs or the DNC Class members'  
23              telephones;
- 24           c. Whether Plaintiffs and the DNC Class member were damaged  
25              thereby, and the extent of damages for such violation; and
- 26           d. Whether Defendant and its agents should be enjoined from  
27              engaging in such conduct in the future.

28       37. As persons that received numerous solicitation calls from Defendant

1 within a 12-month period, who had not granted Defendant prior express consent  
2 and did not have an established business relationship with Defendant, Plaintiffs are  
3 asserting claims that are typical of the DNC Class.

4       38. Plaintiffs will fairly and adequately protect the interests of the  
5 members of The Classes. Plaintiffs have retained attorneys experienced in the  
6 prosecution of class actions.

7       39. A class action is superior to other available methods of fair and  
8 efficient adjudication of this controversy, since individual litigation of the claims  
9 of all Classes members is impracticable. Even if every Classes member could  
10 afford individual litigation, the court system could not. It would be unduly  
11 burdensome to the courts in which individual litigation of numerous issues would  
12 proceed. Individualized litigation would also present the potential for varying,  
13 inconsistent, or contradictory judgments and would magnify the delay and expense  
14 to all parties and to the court system resulting from multiple trials of the same  
15 complex factual issues. By contrast, the conduct of this action as a class action  
16 presents fewer management difficulties, conserves the resources of the parties and  
17 of the court system, and protects the rights of each Classes member.

18       40. The prosecution of separate actions by individual Classes members  
19 would create a risk of adjudications with respect to them that would, as a practical  
20 matter, be dispositive of the interests of the other Classes members not parties to  
21 such adjudications or that would substantially impair or impede the ability of such  
22 non-party Class members to protect their interests.

23       41. Defendant has acted or refused to act in respects generally applicable  
24 to The Classes, thereby making appropriate final and injunctive relief with regard  
25 to the members of the Classes as a whole.

26       ///

27       ///

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## **FIRST CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227(b).

# **On Behalf of SMITH and the ATDS Class**

42. Plaintiffs repeats and incorporates by reference into this cause of action the allegations set forth above.

43. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

44. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, SMITH and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

45. SMITH and the ATDS Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **SECOND CAUSE OF ACTION**

## **Knowing and/or Willful Violations of the Telephone Consumer Protection**

Act

47 U.S.C. §227(b)

# **On Behalf of SMITH and the ATDS Class**

46. Plaintiffs repeats and incorporates by reference into this cause of action the allegations set forth above.

47. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

48. As a result of Defendant's knowing and/or willful violations of 47

*U.S.C. § 227(b), SMITH and the ATDS Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).*

49. SMITH and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **THIRD CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227(c)

## **On Behalf of Plaintiffs and the DNC Class**

50. Plaintiffs repeats and incorporates by reference into this cause of action the allegations set forth above.

51. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

52. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c), Plaintiffs and the DNC Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

53. Plaintiffs and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

#### **FOURTH CAUSE OF ACTION**

## **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227 et seq.

## **On Behalf of Plaintiffs and the DNC Class**

54. Plaintiffs repeat and incorporates by reference into this cause of action the allegations set forth above.

55. The foregoing acts and omissions of Defendant constitute numerous

1 and multiple knowing and/or willful violations of the TCPA, including but not  
2 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,  
3 in particular *47 U.S.C. § 227 (c)(5)*.

4       56. As a result of Defendant's knowing and/or willful violations of 47  
5 U.S.C. § 227(c), Plaintiffs and the DNC Class members are entitled an award of  
6 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.  
7 § 227(c)(5).

8       57. Plaintiffs and the DNC Class members are also entitled to and seek  
9 injunctive relief prohibiting such conduct in the future.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs requests judgment against Defendant for the following:

- A. Actual damages;
- B. As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), SMITH and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B);
- C. As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), SMITH and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C);
- D. As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiffs and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5);
- E. As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiffs and the DNC Class members are entitled to and request treble damages, as provided by

1                   statute, up to \$1,500, for each and every violation, pursuant to  
2                   47 U.S.C. §227(c)(5); and,

3                   F. Any and all other relief that the Court deems just and proper.

4                   **TRIAL BY JURY**

5                   58. Pursuant to the Seventh Amendment to the Constitution of the United  
6                   States of America, Plaintiffs are entitled to, and demands, a trial by jury.

7                   Respectfully submitted this 8th Day of May, 2020.  
8

9                   LAW OFFICES OF TODD M. FRIEDMAN, P.C.

10                  By: /s/Cynthia Z. Levin

11                  Cynthia Z. Levin, Esq. (SBN 27050)  
12                  Law Offices of Todd M. Friedman, P.C.  
13                  1150 First Avenue, Suite 501  
14                  King of Prussia, PA 19406  
15                  Phone: 866-598-5042  
16                  Attorneys for Plaintiffs STEWART SMITH  
17                  and FRED HEIDARPOUR

1                   **CERTIFICATE OF SERVICE**  
2

3                   Filed electronically on May 8, 2020, with:  
4

5                   United States District Court CM/ECF system.  
6

7                   Notification sent electronically via the Court's ECF system on May 8, 2020, to:  
8

9  
10                  Honorable Judge of the United States District Court  
11                  United States District Court  
12                  Eastern District of Pennsylvania  
13

14                  And all Counsel of Record as Recorded on the Electronic Service List.  
15

16                  This 8<sup>th</sup> day of May, 2020.  
17

18                  s/Cynthia Z. Levin  
19                  Cynthia Z. Levin  
20